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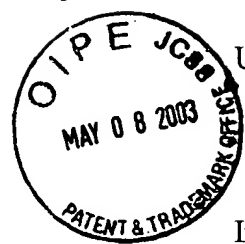
<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	<b>Application Number</b>	08/936,304	
	<b>Filing Date</b>	September 24, 1997	
	<b>First Named Inventor</b>	Dawei Dong	
	<b>Group Art Unit</b>	2828	
	<b>Examiner Name</b>	Leon Scott, Jr.	
<b>Total Number of Pages in This Submission</b>		<b>Attorney Docket Number</b>	Black & Decker 703

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form  <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment / Response  <input type="checkbox"/> After Final  <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application  <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application)  <input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert to a Provisional Application  <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s)  <div>Remarks</div>	<input type="checkbox"/> After Allowance Communication to Group  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):  <b>Petition to Withdraw Holding of Abandonment &amp; Exhibits</b>  <b>Return Post Card</b>

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Adan Ayala, Esq.
Signature	
Date	May 6, 2003

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Typed or printed name	Adan Ayala, Esq.		
Signature		Date	May 6, 2003

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Utility Patent Application

Attorney Docket No. Black & Decker 703

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: **Dawei Dong**

Application No. **08/936,304**

Examiner: **Leon Scott, Jr.**

Filed: **September 24, 1997**

Group Art Unit: **2828**

Title: **Laser Level**

Assistant Commissioner for Patents  
Washington, DC 20231

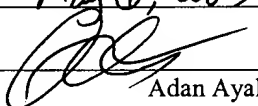
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**MAY 20 2003**

**PETITION TO WITHDRAW**  
**HOLDING OF ABANDONMENT**

**OFFICE OF THE SPECIAL  
PROGRAMS EXAMINER**

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington DC 20231 on

May 6, 2003  
  
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Dear Sir:

In response to the Notice of Abandonment mailed April 14, 2003, Applicants hereby request the withdrawal of the holding of abandonment on the above-identified application pursuant to 37 CFR § 1.181(a) and MPEP § 711.03(c).

The Examiner has held that the present application has become abandoned because a response to the Office Action mailed on April 20, 2002 was not received. Applicants respectfully disagree because a response to the Office Action was timely filed and received by the Patent Office.

Contrary to the Examiner's statements, Applicants did not file a Notice of Appeal on April 31, 2002.<sup>1</sup> Instead, Applicants mailed a Notice of Appeal on July 23, 2002, a copy of which Applicants attach hereto as Exhibit A. Under 37 CFR § 1.8(a)(1), correspondence required to be filed in the PTO within a set period of time is considered timely filed if (a) the correspondence is mailed as first class mail prior to expiration of the set period for response and (b) the correspondence includes a signed certificate stating the date of deposit. The Notice of Appeal was mailed as first class mail on July 23, 2002, i.e., less than three months after the mailing date of the Office Action. This was well before the expiration of the six month period set for filing a response. Second, Applicants' attorney signed a certificate stating the date of deposit, i.e., July 23, 2002. Accordingly, the requirements of § 1.8(a)(1) have been met. Therefore, the Notice of Appeal must be considered timely *even if the Notice of Appeal was received by the PTO after the set response period had expired.* See MPEP § 512, at 500-42 (July 1998 ed.)

Nevertheless, the PTO received the Notice of Appeal well within the six month response period. Applicants have attached as Exhibit B a copy of the return postcard mailed with the Notice of Appeal. Under MPEP § 503, a "postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." In the present case, the postcard receipt itemizes the Notice of Appeal discussed above.

Accordingly, the postcard constitutes *prima facie* evidence that the PTO received the Notice

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<sup>1</sup> Applicants have not filed any papers on April 31, 2002. Applicants request a confirmation that the Examiner's statement that "a Notice of Appeal was filed 4/31/02" is incorrect, or that the Examiner provide Applicants with a copy of such paper.

of Appeal on July 30, 2002, the dated stamped thereon by the PTO. This is well within the six month period for filing a response.

Furthermore, the Examiner states that "no Appeal Brief has been filed within the prescribed time frame." This is incorrect. Under 37 CFR § 1.192(a), the appellant must file an appeal brief in triplicate "within two months from the date of the notice of appeal."

Because Applicants filed the Notice of Appeal on July 23, 2002, the two-month deadline is September 23, 2002.

In the present case, Applicants timely mailed an Appeal Brief on September 23, 2002, a copy of which Applicants attach hereto as Exhibit C. Under 37 CFR § 1.8(a)(1), correspondence required to be filed in the PTO within a set period of time is considered timely filed if (a) the correspondence is mailed as first class mail prior to expiration of the set period for response and (b) the correspondence includes a signed certificate stating the date of deposit. The Appeal Brief was mailed as first class mail on September 23, 2002.

This was within the two-month period set for filing a response. Second, Applicants' attorney signed a certificate stating the date of deposit, i.e., September 23, 2002.

Accordingly, the requirements of § 1.8(a)(1) have been met. Therefore, the Appeal Brief must be considered timely *even if the Appeal Brief was received by the PTO after the set response period had expired.* See MPEP § 512, at 500-42 (July 1998 ed.)


Furthermore, the PTO did receive the Appeal Brief. Applicants have attached as Exhibit D a copy of the return postcard mailed with the Appeal Brief. Under MPEP § 503, a "postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." In the present case, the postcard receipt itemizes the

Appeal Brief in triplicate discussed above. Accordingly, the postcard constitutes *prima facie* evidence that the PTO received the Appeal Brief in triplicate on September 25, 2002, the dated stamped thereon by the PTO.

Because the Appeal Brief was timely filed and received by the PTO, the holding of abandonment should be withdrawn.

No fee is due under the present petition. *See* MPEP § 711.03(c)(I) ("a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment ... does not require a fee."). Nevertheless, the Commissioner is hereby authorized to charge payment of any fees due in processing this petition, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,

  
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